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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/829,430	04/21/2004	Michael Edward Schaffer	MD1080USCNT	8774	
23906	7590 12/15/2006		EXAM	EXAMINER	
	T DE NEMOURS AND	WHALEY, PABLO S			
	ENT RECORDS CENTER LL PLAZA 25/1128		ART UNIT	PAPER NUMBER	
4417 LANCA		1631			
WILMINGTON, DE 19805			DATE MAILED: 12/15/2006		

Please find below and/or attached an Office communication concerning this application or proceeding.

17

1) Responsive to communication(s) filed on 25 September 2006. 2a This action is FINAL. 2b This action is non-final. 3 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4 Claim(s) 1-10 is/are pending in the application. 4a Of the above claim(s) is/are withdrawn from consideration. 5 Claim(s) is/are allowed. 6 Claim(s) is/are allowed. 6 Claim(s) is/are elpected. 7 Claim(s) is/are subjected to. 8 Claim(s) 1-10 are subject to restriction and/or election requirement. Application Papers 9 The drawing(s) filed on is/are: a accepted or b objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11 The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12 Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a All b Some * c Moreo of: Certified copies of the priority documents have been received in Application No. 3 Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). See the attached detailed Office action for a list of the certified copies not received. Paper No(s)Mail Date. Paper No(s)Mail Date.			Aş	oplication No.	Applicant(s)				
Pablo Whaley 1631 - The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. **A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. **A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING PRIOR OF THE MONTH OF THE MAILING PRIOR OF THE MONTH OF THE MAILING PRIOR OF	Office Action Summary		10	10/829,430 SCHAFFER ET AL.		L.			
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WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions for many be available under the provision of 3° CFR 1.13(b). In a revent, however, may a reply be timely filed after 50 kg) MODRIS from the mailing date of this communication. Failth for reply we available under the provision of 10° CFR 1.13(b). In a revent however, may a reply be timely filed after 50 kg) MODRIS from the mailing date of this communication. Failth for reply which the set of central depends for reply will, by statule, cause the application to secome ABARNOSHOED 51 us U. S. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any variety precised by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any variety provided by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any variety received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any variety received by the Office later than the mailing date of this communication. Status 1) □ Responsive to communication (s) filed on 25 September 2006. 2a) □ This action is FINAL. 2b) □ This action is non-final. 3 □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4 □ Claim(s) 1-12 is/are pending in the application. 5 □ Claim(s) 1-12 is/are pending in the application for mail and the provision of the above claims (s) 1-12 is/are rejected. Claim(s) 1-12 is/are rejected. 7 □ Claim(s) 1-12 is/are rejected. Application Papers 9 □ The specification is objected to by the Examiner. Applicant may not request that any objection to the drawings be held in abeyance. See 37 CFR 1.121(d). 11 □ The cath or declaration is o			nication appear	s on the cover sheet with	the correspondence ac	ddress			
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			PTO-948)						

Art Unit: 1631

DETAILED ACTION

Applicant's election of SEQ ID NO: 11 in the reply filed on 09/25/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The Examiner wishes to acknowledge and thank the applicant for a timely election of this species. After further consideration, however, it has been determined that instant claims 1-10 do in fact recite distinct species that have acquired a separate status in the art because of their recognized divergent subject matter. Therefore a further supplementary restriction requirement, listed below, is required. The Examiner sincerely apologizes for failing to make this distinction in the previous office action, and for any inconvenience this has caused the applicant. As a secondary issue, the Examiner has also discovered claim informalities, listed below, that should be corrected in order to expedite prosecution.

OBJECTION

Claims 9 and 10 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 9 depends from the method of claim 1 and claim 9. The Examiner believes claim 9 (line 3) should be new claim. Claim 10 depends from the method of claim 10. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

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SPECIE ELECTION REQUIREMENT

This application contains claims directed to patentably distinct species of the claimed invention.

The applicant is further required to make the following specie election for purposes of

examination:

Specie A: Species of target nucleic acid molecules cited in claims 6, 7, 9, and 10, which are

directed to pathogenic organisms, specific genes and promoters, transgenes, and viruses, and

thus generally separately classified and published, and thus document undue search burden if

searched together. Thus applicants are required to select a first and second target nucleic acid

molecule from those listed in claims 6, 7, 9, and 10 to begin prosecution.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for

prosecution on the merits to which the claims shall be restricted if no generic claim is finally held

to be allowable. Currently, claims 1-5 are generic to the above species.

Applicant is advised that a reply to this requirement must include an identification of the

species that is elected consonant with this requirement, and a listing of all claims readable

thereon, including any claims subsequently added. An argument that a claim is allowable or

that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of

claims to additional species which are written in dependent form or otherwise include all the

limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after

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the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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CONCLUSION

Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Pablo Whaley whose telephone number is (571)272-4425. The examiner

can normally be reached on 9:30am - 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Andrew Wang can be reached at 571-272-0811. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

.Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pablo S. Whaley

Patent Examiner
Art Unit 1631

Office: 571-272-4425

Loci A Claw Patent Examines 12/8/06